88-328

Supreme Court, U.S.
FILED
MAY 10 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

CHARLES J. RAKOWSKI,
APPELLANT

V.

UNITED STATES OF AMERICA,
APPELLEE.

CLAIM AND DEMAND FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

CHARLES J. RAKOWSKI
REG. NO. 04953-067, UNIT A-2
P.O. BOX 1000, ALLENWOOD FPC
MONTGOMERY, PA 17752
(717) 547-1641

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Third Circuit unlawfully upheld the District Court's conviction by ruling on a bogus strawman appeal brief submitted by a public defender appointed to "represent" the appellant against his protests.

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CLAIM AND DEMAND FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

I, appellant Charles J. Rakowski, hereby claim and demand as a matter of right that a writ of certiorari be issued to review the judgment order of the United States Court of Appeals for the Third Circuit issued March 11, 1988.

OPINION BELOW

On March 11, 1988, the United States Court of Appeals for the Third Circuit (Judges Weis, Greenberg, and Aldisert) issued its judgment order affirming the District Court's conviction of July 17, 1987. This Appeals Court judgment order was based upon an appeal brief submitted by a public defender "forced" by the Appeals Court to "represent" the appellant. A copy of the Appeals Court's judgment order is contained in Appendix A, a copy of the District Court's judgment order is contained in Appendix B. A copy

of the appellant's Statement of Issues is attached as Appendix C, a copy of the public defender's Statement of Issues is attached as Appendix D.

JURISDICTIONS

The jurisdiction of the Supreme Court is invoked under the Constitution of the United States of America, Article III, Section I, and Title 28, United States Code, Section 1254(1).

The jurisdiction of the Appeals Court was invoked under Title 28, United States Code, Section 1291.

The District Court of the Middle District of Pennsylvania never had lawful jurisdiction to try the appellant.

CONSTITUTIONAL PROVISIONS INVOLVED

The provision of the Constitution of of the United States of America involved herewith is Amendment Article V: "...nor shall any person... be deprived of life,

liberty, or property without due process of law; ...". (emphasis added)

STATEMENT OF THE CASE

The appellant was "convicted" in District Court on July 17, 1987. On August 21, 1987, the District Court issued its judgment order and the appellant filed his notice of appeal.

On August 27, 1987, the Third Circuit Court of Appeals issued an (unlawful) order for the Federal Public Defender Organization of the M ddle District of Pennsylvania to "represent" the appellant in this matter.

On September 3, 1987, the appellant wrote Ms. Melinda Ghilardi, FPD, that he did not want her to handle his case, and claimed Mr. Andrew Melechinsky, paralegal of CONSTITUTIONAL REVIVAL, as his choice of assistance of counsel. See Appendix E.

On September 10, 1987, FPD Ghilardi

sent a motion to the Third Circuit Court of appeals to withdraw as counsel.

In an order on September 15, 1987, the Third Circuit Court of Appeals (unlawfully) denied FPD Ghilardi's motion to withdraw, and recognized the appellant's right to submit an appeal brief on his own behalf.

On September 16, 1987, FPD Ghilardi informed the appellant of her intentions of obeying the Appeals Court "order".

On September 17, 1987, FPD Ghilardi, without any knowledge of the appellant's finances and without his permission or knowledge, unlawfully executed a "Disclosure of Corporate Affiliation and Financial Interest" with the Appeals Court to give cover to her "representation", and to which the appellant later objected.

On September 25, 1987, the appellant wrote FPD Ghilardi and again rejected her activities to "represent" him and file a

brief on his behalf. See Appendix F.

On December 16, 1987, FPD Ghilardi filed her appeal brief "for appellant", and on December 17th, the appellant filed his appeal brief (improved version filed on December 24, 1987); appendices were filed separately.

On March 11, 1988, the Appeals Court (Judges Weis, Greenberg, and Aldisert) issued its judgment order afirming the District Court's conviction based upon the two issues presented by FPD Ghilardi in her appeal brief, not the "contentions raised by appellant".

ARGUMENT FOR ISSUING WRIT

During the District Court "trial", neither ?Judge? R.P. Conaboy, prosecutor B. Brandler, nor Internal Revenue Service Agents P. Connally, R. Wren, and J. Dunley would explain or justify any of their accusations, issues of law, or procedures. The District Court never had, nor ever tried

to prove, jurisdiction over the appellant, instead bullying and coercing his presence at the "trial". Neither the Court, prosecutor nor the IRS agents proved in any way that the appellant was a taxpayer liable (as defined), what revenue taxable activities he was supposed to have engaged in, or how he, as a flesh and blood individual earning a peaceful, moral, lawful living without benefit of government granted incorporation, license, privilege or monopoly, became liable for the income tax.

The appellant identified the government's unlawful omissions and deceptions, and refuted them in eight statement-of-issues arguments in his appeal brief. Also in his appeal brief and reply, the appellant charged that the FPD was foisted upon him to help convict him in the District Court "trial" and that the Appeals Court was doing the same thing by ordering her to submit an appeal brief

"on his behalf". As the above identified correspondence shows, the appellant strenuously objected to these false and fraudulant machinations, and did his best to stop it.

The appellant did not realize how accurate his words were to become. The FPD's appeal brief had nothing to say about the appellant's income tax liability status, thus in effect conceding the case to the prosecutor and Court who acted together against the appellant. The FPD's brief instead considered only two issues: denial of assistance of counsel, and denials of claims (not motions) for continuances. As the FPD's brief was laced with numerous (equity) references to various court decisions, the Appeals Court of course had an easy time denying her brief.

But the Appeals Court did not deny the appellant's appeal brief; it never even considered it when it wrote its judg-

ment order, and that was and is an unlawful and flagrant denial of due process. The reason the Appeals Court didn't consider the appellant's appeal brief arguments is because it could not answer them honestly. And to try to gloss over its unlawful actions and give itself a false appearance of legitimacy, it deliberately mis-stated the facts in its judgment order by saying it "[considered] the contentions raised by appellant" when it did no such thing. If the Appeals Court had no intention of considering and answering the appellant's appeal brief, why did it say he could submit one?! Perhaps this appellant's experience is clear evidence, if not proof, of the real purpose of public defenders.

For the reason the appellant has been denied due process of law by simultaneously being denied assistance of counsel of his choice and having had a public defender

forced upon him so that her phony appeal brief could be used as a basis for affirm- the District Court conviction while his appeal brief was totally ignored, he claims and demands that this Court issue a writ of certiorari to review the judgment order of the United States Court of Appeals for the Third Circuit made March 11, 1988.

DISCLAIMER

I, the appellant in this action, do not waive any jurisdiction. In order to obtain justice, I am compelled to continue resisting the unlawful equity procedure initiated against me without my consent by the overpowering force of the appellee. I hereby enter this CLAIM AND DEMAND FOR WRIT OF CERTIORARI for the purpose of having the Supreme Court of the United States of America reverse the wrongs done to me by the District Court of the Middle District of Pennsylvania and the United States

Court of Appeals for the Third Circuit, and to prevent further trespass against my person and rights.

I did not, and do not, want to be in a court of equity. The District Court, by forcing me to "trial", broke the law by violating my rights guaranteed by Amendment Articles IV, V, VI, VIII, IX and X of the Constitution of the United States of America, and made itself a court of equity. The Appeals Court for the Third Circuit has also violated my rights and the law as explained herein above.

I claim and demand that this Supreme Court hear my appeal and redress the wrongs done to me according to Constitutional at-law standards. If this Court is unable or unwilling to do so, it is to send this "case" to a Court that can and will.

I demand all of my rights at all times and waive none of my rights at any time for any cause or reason, such as mistakes

during my "trial" when I was denied assistance of counsel of my choice, and including my right to the monetary value of my life (ie, my time and efforts), guaranteed by the Declaration of Independence and the Constitution of the United States of America and its Bill of Rights.

Completed at Allenwood FPC, Montgomery, PA, on June 2, 1988.

The Appellant (under duress)

Charles J. Rakowski

Charles J. Rakowski (denied assistance of counsel of choice)

AFFIRMATION

I hereby affirm that the above statements are true and correct to the best of my knowledge and belief.

Charles J. Rakowski

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

CHARLES J. RAKOWSKI,

APPELLANT,

V.

UNITED STATES OF AMERICA,

APPELLEE.

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies he is the brother of the appellant and is a person of such age and discretion as to be competent to serve papers.

That on June 15, 1988, he served one copy of the appellant's

CLAIM AND DEMAND FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

by placing said copy in a postpaid envelope addressed to the person and place stated below, and by depositing said envelope in the United States mail at SAN DIEGO, California:

Solicitor General of the United States
Department of Justice
Washington, DC 20530

James E Rakowski

James E. Rakowski
3808 Rosecrans St. #422
San Diego, CA 92110

88-329

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SUPREME COURT OF THE UNITED STATES

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CHARLES J. RAKOWSKI,
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APPENDIX FOR

CLAIM AND DEMAND FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CHARLES J. RAKOWSKI
REG. NO. 04953-067, UNIT A-2
P.O. BOX 1000 ALLENWOOD FPC
MONTGOMERY, PA 17752
(717) 547-1641

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-5600

UNITED STATES OF AMERICA

v.

RAKOWSKI, CHARLES J.,
Appellant

On Appeal from the United States District Court for the Middle District of Pennsylvania. Criminal Action No. 87-00064. District Judge: Honorable Richard P. Conaboy

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Submitted Under Third Circuit Rule 12(6)
March 8, 1988

BEFORE: WEIS, GREENBERG, and ALDISERT,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellant in the above captioned matter, to wit, that the court erred (1) in forcing appellant to proceed pro se without a waiver of counsel and (2) violated appellant's Fifth Amendment rights by denying his motion for a contin-

uance, it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

BY THE COURT,

s/ Morton A. Greenberg(?)
Circuit Judge

ATTEST:

s/ Sally Mrvos
Sally Mrvos, Clerk

DATED: MAR 11 1988

- -

Page 2

No. 87-5600

Certified as a true copy and issued in lieu of a formal mandate on April 4, 1988.

Test: s/ M. Elizabeth Ferguson (stamped)

Chief Deputy Clerk, U.S. Court of Appeals for the Third Circuit.

COPY

APPENDIX B

JUDGMENT AND PROBATION/COMMITMENT ORDER

United States District Court for the
Middle District of Pennsylvania.

Docket No. Cr 87-00064

United States of America vs.

Charles J. Rakowski
713 Price Street
Dickson City, PA 18519

"In the presence of an attorney for the government the defendant appeared in person on this date" August 21, 1987

"Counsel": X with counsel Melinda Ghilardi
FPD, 501 Scranton Center,
Scranton, PA.

"Plea": None (no choice X'd)

"Finding and Judgment": (There being a verdict of) X Guilty. (Defendant has been convicted as charged of the offense(s) of) 26:7201 - Attempted tax evasion.

"Sentence or Probation Order": On Count I, IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a term of three (3) years.

On each of Counts II, III, IV, and V, the sentence is the same and is to run concurrently for terms of confinement totalling three (3) years.

In accordance with the Crime Control Act of 1984, IT IS FURTHER ADJUDGED on Count V that the defendant pay a special assessment of $50.00 to the U.S. Depart-

ment of Justice for disbursement to the Crime Victim"s Fund. The obligation shall be due immediately.

The Court recommends to the U.S. Parole Commission that the defendant be required to serve two (2) years confinement.

It is further ordered that the defendant pay the taxes due and the costs of prosecution.

The execution of sentence is stayed to the tenth day following the Court's disposal of the defendant's motions for arrest of judgment and a new trial. It is ordered that bail be continued with the additional stipulation that the defendant post a bond of $7,500 with the Clerk of the Court by August 24, 1987.

"Signed by X U.S. District Judge":s/ Richard P. Conaboy (?).

NOTE: The Order is a standard U.S.GPO form 1982-0-388-85272853, two pages long. It is stamped "FILED/ Scranton/ Aug 21 1987/ Per Donald R. Berry (w/ initials)/ Deputy Clerk"

STATEMENT OF THE ISSUES

1. As the appellant has neither harmed nor threatened to harm any person's life, liberty or property, nor committed fraud on anyone, the district court violated his rights in criminally charging him with a non-existent violation of law and forcing him to participate in a kangaroo court "trial".

2. The district court violated the appellant's rights in assuming jurisdiction by a.) denying him habeas corpus, b.) unlawfully entering a "plea" for him at the unauthorized "arraignment", and c.) refusing to hold an evidenciary hearing to recognize his NONTAXPAYER legal status.

3. The district court violated the appellant's rights when it prevented him from having his choice of assistance of counsel.

4. The district court violated the

appellant's rights in denying him a fair and impartial jury which was not given the proper Constitutional oath.

5. The district court violated the appellant's rights when it ruled that Title 26 U.S.C. "is the law", and that his pay was income.

6. The district court violated the appellant's rights by lying; denying his Constitutionally impeccable briefs, etc., and overruling his objections, without giving Constitutional explanations; by being illogical; and by sermonizing and lecturing him in memorandums and during the "trial".

7. The district court violated the appellant's rights by conducting the "trial" on the basis that he was guilty until proven innocent, while it was mouthing that he was "innocent until proven guilty".

8. The district court violated the appellant's rights by unlawfully treat-

ing his social security account and IRS 1040 forms as contracts in order to classify him as a TAXPAYER, and not bringing these facts out during the "trial".

(APPENDIX D)

STATEMENT OF ISSUES PRESENTED

I. WHETHER THE DISTRICT COURT IMPROPERLY FORCED CHARLES J. RAKOWSKI TO PROCEED *PRO SE* WITHOUT A WAIVER OF COUNSEL?

II. WHETHER RAKOWSKI'S FIFTH AMENDMENT RIGHTS WERE VIOLATED BY THE DISTRICT COURT'S DENIAL OF HIS MOTION FOR CONTINUANCE?

APPENDIX E

#04953-067 Unit A-1
P.O. Box 1000 FPC
Montgomery, PA 17752
September 3, 1987

Federal Public Defender's Office
501 Scranton Center
401 Adams Ave.
Scranton PA 18510

Attention: Ms. Melinda C. Ghilardi

Dear Ms. Ghilardi:

This letter is in response to the letter you received from the Third Circuit Court of Appeals appointing you to represent me per my notice of appeal of 8-21-87.

As we discussed in our two phone calls, the Circuit Court is drawing upon your appointment as my "standby counsel" during my recent trial in making its decision in its August 27th letter.

My primary concern is that my "case" continue to be presented from a strictly Constitutional point of view. While we have not had time to discuss this in more detail (due to my incarceration and your time table to respond to the Circuit Court), your reluctance not to argue Title 26 U.S.C. is <u>not</u> law because there is no case law on it leads me to conclude you would not argue strictly Constitutional.

Accordingly, based upon what information I have available now, I must state that I do not want you to "handle" my "case" before the Appeals Court. I con-

tinue to claim Mr. Andrew Melechinsky as my choice of assistance of counsel, a claim the district court has flagrantly denied me from the beginning.

Very truly yours,
s/ Charles J. Rakowski (under duress)
Appeals Court #87-5600
District Court #87-00064

APPENDIX F

#04953-067 Unit A-1
P.O. Box 1000 FPC
Montgomery, PA 17752
September 25, 1987

Federal Public Defender
Middle District of Pennsylvania
501 Scranton Center
401 Adams Avenue
Scranton, PA 18510

Attention: Ms Melinda C. Ghilardi

Dear Ms Ghilardi:

This letter is in response to your letter of September 16th to me, and the Third Circuit Court of Appeals order of September 15th to you, both regarding your being counsel for me and my appeal.

First of all, thank you for your letter of September 10th, with attached motion to dismiss, informing the Appeals Court that you were withdrawing as counsel in my case. (As an aside, your argument why I am exempt from income taxes, paragraph 14, is incomplete and hence does not present my case properly.)

I don't know who the judges of the Appeals Court think they are, but there is no Constitutionally lawful way they can force me to accept you as my lawyer-representative. I thought I made myself clear clear on this when I spoke to you, and wrote you on September 3rd.

To make matters worse, your letter to me of September 16th indicates that you not only will submit to the Appeals

Court order to represent me (the district court is out of the picture now and its order null and void), but that you are taking it upon yourself to order me as to when my brief is due to you (October 16 th). I do not accept these terms or orders.

When I was re-kidnapped by U.S. Marshals on August 24th, I had not had a chance to put my court papers and research material in order. Try as I may, I have not been able to get my sister or mother to send me the various items I want to use to write my appeals brief. One of the reasons is my telephone communications in all three prisons (lackawanna County, Lewisberg, and here at Allenwood) have been, and still are, severely limited. (Defacto) judge Conaboy, I'm sure, knew all this would happen, and no doubt was a prime reason he put me here now.

Enclosed find a copy of my writ of Habeas Corpus which (I believe) I filed with the Appeals Court on September 15th. Although this writ should have been acted upon immediately, I have still not heard from the court on it. The courts know I am entitled to be "free" at home to work on my appeal, and that the conditions here at Allenwood make my work nearly impossible; yet they continue to insist upon denying me.

In addition, 1.) the trial transcript has not been completed, nor do I know when I will get a copy of it; 2.) you have not had a chance to review the court papers I have submitted; and 3.) neither of us knows what the other is thinking or intends to submit in the way of an appeals brief. Thus, I don't see how you could agree to proceed as you are without your

taking the attitude that I don't really matter in any of this.

For the record, you and the Appeals Court (by copy of this letter) are to know I reject what you are both doing to me. Together you are giving the color or appearance I have benefit of Constitutionally mandated effective assistance of counsel, when in fact no such assistance exists at all as far as I can see.

I shall continue with my efforts to prepare a brief, and will submit it as soon as possible (since it is in my self-interest to do so). However, I cannot and will not set a date for it, and neither will I hold myself liable for your October 16th date. Let the record also show I had absolutely nothing to do with the "Disclosure of Corporate Affiliations and Financial Interest" form you submitted without consulting me.

Constitutionally yours,

s/ Charles J. Rakowski

Charles J. Rakowski

cc: Third Circuit Court of Appeals
Mr. Andrew Melechinsky